IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 624 OF 2004 .

The City & Industrial Development Corporation of Maharashtra Ltd. ..Appellants.

vs.

Haware Engineers ande Builders P.Ltd. ..Respondents.

Shri G.S. Hegde for the appellants.

Shri L. Lentin i/b M. Tripathi & Co. for respondent No.1.

Shri K.K. Tated,AGP for respondent No.2.

CORAM: V.C.DAGA,J.
DATED: 15.9.2004.

JUDGMENT:

. This appeal is directed against the order dated 22.4.2004 passed below Ex.5 in Regular Civil Suit No. 170 of 2004 by the Civil Judge, SD, Thane, restraining the defendant from opening tender in respect of plot No. 71, Sector-19, Navi Mumbai.

Recap of dispute:

2. A brief recap of dispute giving rise to the present appeal are that the appellant- City & Industrial Development Corporation of Maharashtra Ltd.(‘CIDCO’ for short) had invited tenders for

allotment of plot No,.95, Sector 19, Airoli, Navi Mumbai sometime in the month of September 2002.

3. The appellant- CIDCO had received only one tender from respondent No.1. It did not accept that tender as there were no other competitors. Accordingly, decision taken by the appellant-CIDCO came to be communicated to respondent No.1 sometime in the month of October 2002.

4. Being aggrieved by the aforesaid decision of the appellant-CIDCO, respondent No.1 filed a suit being Civil Suit No. 87 of 2003 in the Court of Civil Judge, JD, Vashi. In the said suit, an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure (the 'C.P.C.' for short) (Exhibit 5) was moved and an order of status-quo was obtained by respondent No.1-plaintiff therein; from the trial Court.

5. Being aggrieved by the said order of status-quo, CIDCO filed Appeal from Order before the District Court which was allowed . The aforesaid order of the District Judge was subject matter of challenge in the writ petition being Writ Petition No. 3911 of 2003 before this Court. The said writ petition was heard

by the learned Single Judge of this Court, who by his order dated 27th June 2003 was pleased to dismiss the same. The present respondent No.1 did not challenge the said order of the learned Single Judge with the result above order of this Court became final and conclusive.

6. The respondent No.1, plaintiff in that suit chose to withdraw that suit bearing Civil Suit NO. 87 of 2003 and chose to approach Government of Maharashtra to seek direction to get the plot allotted.

7. The State Government vide its order dated 23rd July 2003 obliged respondenet No.1 and passed order directing allotment of plot to the respondent No.1. After receipt of the order from the State Government, the appellant herein informed the State Government that the suit plot has already been sub-divided and tenders have already been called from the public for allotment of sub-divided plots and expressed its inability to honour the directions of the State Government.

8. Respondent No.1 in order to seek implementation of directions issued by the State Government directing the appellant-CIDCO to allot plot in question to the

respondent No.1, filed a fresh suit being Reg. Civil Suit No. 170 of 2004 and moved an application for directions in the nature of interim injunction under O.39 R.1 & 2 of the C.P.C. restraining the CIDCO from inviting and/or processing tenders in respect of allotment of sub-divided plot Nos. 66 to 70, originally part of original Plot No.71.

9. The trial Court after hearing rival parties to the interim injunction application vide its order dated 22.8.2004 restrained the CIDCO from opening tenders in respect of various sub-divided plots forming part of original Plot No.71, located in Sector 19, Navi Mumbai. This order dated 22.8.2004 directing grant of temporary injunction is a subject-matter of challenge in the present appeal filed by the appellant-CIDCO.

Submissions:

10. Shri Hegde, learned Counsel appearing for the appellant-CIDCO submits that the State Government has no powers to direct allotment of plot in exercise of powers under section 154 of the Act. Shri Hegde relied upon unreported judgment of the Division Bench of this Court in Writ Petition (Ld) 115 of 2004 (Mahalaxmi Mahila Sahakari Grahak Sanstha Maryadit vs.

The State of Maharashtra & ors.) dated 29th April 2004, to contend that unless directions are issued in the public interest for efficient administration of the Act, the same are not binding on the CIDCO.

11. Shri Hegde further submits that under section 154 of the said Act, every regional board, planning and development authority is required to carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of the Act.

12. According to Shri Hegde, the object of the direction must be to carry out the object of the Act and not contrary to it. Only such directions as are reasonable and necessary or expedient to carry out the object of the enactment are required to be followed in view of mandate of section 154 of the Act. He, therefore, contends that in exercise of powers under section 154 of the Act, the State Government is expected to act reasonably and rationally and for efficient administration of the Act. The State Government has no right to issue directions which are irrational, irrelevant and has no fairness or equality. In any case, powers of the State Government cannot be used for causing revenue losses to the

statutory authority. He submits that the authorities under the Act are the guardian of the properties which are made available at the disposal of the planning authority as such powers should be used for the benefit of the public at large. Shri Hegde therefore, submits that the CIDCO was perfectly justified in not following directions issued by the State Government considering the peculiar facts and circumstances of the case in hand. He, submits that the trial Court ignored this aspect of the matter. It could not have granted interim injunction to implement order of State Government which runs counter to the mandate of section 154. He, therefore, submits that no prima facie case was made out by the respondent-plaintiff to seek interim injunction against the appellant-CIDCO.

13. Shri Hegde further submits that respondent No.1 having withdrawn earlier suit cannot be allowed to fall back on cause of action which has disappeared with the withdrawal of the suit. He further submits that the impugned order cannot stand to the scrutiny of law as such the same is liable to be quashed and set aside.

Per Contra:

14. The learned Counsel for respondent No.1 tried to support the impugned order and submitted that the State Government has full control over CIDCO. It is expected to honour the directions issued by the State Government from time to time. He tried to challenge the validity of the action rejecting tender submitted by respondent No.1.

CONSIDERATION:

15. Having heard rival parties, the submissions advanced by the learned Counsel for respondent No.1 challenging refusal to accept tender of the respondent No.1 cannot be accepted in view of withdrawal of the earlier suit. The issue with respect to the rejection of the tender cannot be reopened.

16. So far as direction issued by the State Government is concerned, the said direction travels beyond the scope of section 154 of the Act. As such, CIDCO was within its rights not to follow the said direction and thereby refuse to allot plot to the respondent No.1.

17. If one turns to section 154 of the Act, it thus reads :

> "**Control of State Government-** (1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.
>
> (2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority and the State Government, the decision of the State Government on such dispute shall be final."

The Division Bench of this Court in case of Mahalaxmi Mahila Sahakari Grahak Sanstha Maryadit (Supra), observed as ubnder:

> "Section 154 says that every "regional board, planning and development authority" shall carry out such directions or instructions as may be issued from time to time by the State Govt. "for the efficient administration of this Act". In Bangalore Medical Trust vs. B.S. Muddappa and others, AIR 1991 SC 1902, the Supreme Court construed a similar provision in Karnataka Act which empowered the Govt. to give directions to Bangalore Development Authority as are in its opinion necessary or expedient for carrying out the purpose of the Act. Rejecting the argument that the authorities are bound by all the directions of the Govt. irrespective of the nature or purpose of the directions the Court held that power of the Govt. is not unrestricted. The object of the directions must be to carry out the object of the Act and not contrary to it. Only such directions as are reasonable and necessary or expedient for

> carrying out the object of the enactment are contemplated by the section. Therefore, in exercising the powers under sec.154, the State Govt. is expected to act reasonably and rationally and for efficient administration of the Act. The State has no right to issue directions which are irrational, irrelevant and has no fairness or equality. In any event, the power of the State Govt. cannot be used for causing revenue losses to the statutory authority. The authorities are in a position of guardian of the properties which are made available at the disposal of the Planning Authority and powers should be used for the benefit at the public at large."

18. Considering the law laid down by the Division Bench, it cannot be said that respondent No.1-original plaintiff has made out a prima facie case for grant of injunction. The trial Court could not have granted injunction in favour of respondent No.1. The discretion exercised by the trial Court is perverse, contrary to the law laid down by this Court as also contrary to the spirit of section 154 of the Act as such the same cannot stand to the scrutiny of law.It is liable to be quashed and set aside. Appeal deserves to be allowed.

19. In the result, impugned order is quashed and set aside. Appeal is allowed with no order as to costs.

20. At this stage, learned Counsel for the respondents applies for continuation of the

status-quo for another 4 weeks from today. Considering reasonableness of the request, status-quo already operating in favour of the respondent shall continue for a period of 4 weeks from today.

C.C. expedited.